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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TAMARA SMITH  
1740 Georges Lane  
Philadelphia, PA 19131

Plaintiff

NO.

vs.

PATENAUDE & FELIX, A.P.C.  
213 East Main Street  
Carnegie, PA 15106

Defendant

**COMPLAINT**

**I. INTRODUCTION**

1. This is an action for damages brought by a consumer pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692 (“FDCPA”).

2. The FDCPA prohibits collectors from engaging in deceptive and unfair practices in the collection of consumer debt.

3. Defendant is subject to strict liability for sending a collection letter which violates the provisions of the FDCPA.

**II. JURISDICTION**

4. Jurisdiction arises under 15 U.S.C. §1692k and 28 U.S.C. §1337.

**III. PARTIES**

5. Plaintiff is Tamara Smith. She is a consumer who resides in Philadelphia, Pennsylvania at the address captioned.

6. Defendant Patenaude & Felix, A.P.C. is a law firm with a regular place of business in Carnegie, Pennsylvania, and a mailing address as captioned (hereinafter referred to as "Patenaude").

7. Patenaude regularly engages in the collection of consumer debts using the mails and telephone.

8. Patenaude regularly attempts to collect consumer debts alleged to be due another.

9. Patenaude is a "debt collector" as that term is contemplated in the FDCPA, 15 U.S.C. §1692a(6).

#### **IV. STATEMENT OF CLAIM**

10. On October 7, 2005, defendant Patenaude sent plaintiff a communication in an attempt to collect a consumer debt alleged due in the amount of \$1,367.73 (See Exhibit "A" attached hereto and appropriately redacted for privacy per local rule).

11. Defendant's October 7, 2005 letter is signed by David T. Genz. Below Genz's name appears "Operations Manager".

12. Mr. Genz's signature appears under the signature line "Law Office of Patenaude & Felix".

13. Section 1692e of the FDCPA prohibits a debt collector from using any false, deceptive, or misleading representations or means in connection with the collection of any debt, including the false representation or implication that any communication is from an attorney. 15 U.S.C. §1692e and §1693e(3).

14. A collection letter on attorney letterhead implies that an attorney has reviewed the subject account and has made a reasoned decision regarding the file.

15. On information and belief, Genz is not even a lawyer.

16. Defendant holds itself out as attempting to collect the account by a lawyer who is the operations manager of the firm.

17. Defendant's October 7, 2005 letter is false, deceptive and misleading because it lacks the requisite attorney involvement and deceptively states or implies that an attorney is personally involved in the collection process.

**COUNT I - FAIR DEBT COLLECTION PRACTICES ACT**

18. Plaintiff repeats the allegations contained above as if the same were here set forth at length.

19. Defendant Patenaude's October 7, 2005 letter to Plaintiff violates the FDCPA by sending a false, deceptive, and misleading communications in violation of 15 U.S.C. §1692e and §1692e(3).

**WHEREFORE**, Plaintiff, Tamara Smith demands judgment against defendant Patenaude & Felix, A.P.C. for:

- (a) Damages;
- (b) Attorney's fees and costs; and
- (c) Such other and further relief as the Court shall deem just and proper.

**V. DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury as to all issues so triable.

Respectfully submitted:

Date: 5/23/06

/s/ Cary L. Flitter (CLF5997)  
CARY L. FLITTER  
Attorney for Plaintiff  
LUNDY, FLITTER,  
BELDECOS & BERGER, P.C.  
450 N. Narberth Avenue  
Narberth, PA 19072  
(610) 822-0782

# **EXHIBIT "A"**

# PATENAUE & FELIX, A.P.C.

A PROFESSIONAL LAW CORPORATION

[X] PLEASE REPLY TO OFFICE INDICATED

[X] 4545 MURPHY CANYON RD, 3RD FL  
SAN DIEGO, CALIFORNIA 92123  
TEL (858) 244-7600 (800) 832-7675  
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CARNEGIE, PENNSYLVANIA 15106  
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10/07/05

TAMARA SMITH  
1740 GEORGES LN

PHILADELPHIA, PA 19131

RE: Our Client: MIDLAND CREDIT MANAGEMENT, INC  
Balance Due: \$1,367.73  
Our File No.: 3600.5721  
Account No.: [REDACTED]

Dear TAMARA SMITH:

We have been unable to reach you telephonically to advise you of a recent limited settlement program that has been initiated by our client regarding your outstanding balance.

For a brief period, our client has authorized this office to discount a substantial portion of your obligation. Please call as soon as possible to get specific details. Upon receipt of the settlement proceeds, the account will be considered settled in full and no more sums will be due and payable.

Please contact our office immediately at our toll free number to advise of your intentions. If you should choose to correspond with us in writing, please be sure to include your telephone number. If you should have any further questions and/or comments, please do not hesitate to call.

Very truly yours,

LAW OFFICE OF PATENAUE & FELIX

By: David T. Genz  
Operations Manager

THIS COMMUNICATION IS FROM A DEBT COLLECTOR